

MEDIATION AND IMPARTIAL DUE PROCESS HEARING PROCEDURES

I. Generic Procedures Relating to Both Mediation and Impartial Hearings

- A. An individual applying for or receiving vocational rehabilitation services (or their representative), who is dissatisfied with any determination made by vocational rehabilitation personnel concerning the furnishing or denial of services, may request a timely review of the determination using any or all of the following means: contacting the Client Assistance Program; requesting mediation and/or requesting a fair hearing by an impartial hearing officer.
- B. Persons applying for or receiving vocational rehabilitation services will be notified, in writing, of the availability of the client assistance program, mediation services, and fair hearing:
 - 1. At the time the individual applies for vocational rehabilitation services.
 - 2. Upon determination of eligibility or ineligibility.
 - 3. At the time the individualized plan for employment (IPE) is developed.
 - 4. Upon reduction, suspension or cessation of vocational rehabilitation services for an individual.
 - 5. Upon closure.
- C. Any party who wishes to submit relevant evidence and information may do so. Terms for submitting the evidence and information are found in parts II and III of this attachment.
- D. Persons applying for or receiving services may be represented by a person they select.

North Dakota Administrative Code 75-01-03-02, entitled *Vocational Rehabilitation Determinations - Administrative Review Procedures - Appeals*, contains additional procedures. Some of the terms used in the code are found in this attachment and are described below.

“Claimant” means an applicant or eligible individual who is dissatisfied with any determination made by vocational rehabilitation personnel concerning the furnishing or denial of vocational rehabilitation services and who has made a timely request for review of the determination.

“Division” means the vocational rehabilitation division of the department.

“Party” or “parties” refers to the division and to a claimant.

II. Specific Procedures for Mediation

Vocational Rehabilitation has met with other state agencies that provide mediation services under their respective Acts and has arranged to use qualified mediators, trained to provide these services, should the need arise. There are qualified mediators in human service centers around the state. We have also contacted the Conflict Resolution Center on the campus of the University of North Dakota. The center offers training and mediation services regionally and is available to offer either of these services on request. Vocational Rehabilitation will collaborate with the center and other trained mediators to provide training regarding the Rehabilitation Act and its associated regulations.

- A. An individual applying for or receiving vocational rehabilitation services, who is dissatisfied with any determination made by vocational rehabilitation personnel concerning the furnishing or denial of services, may request mediation services. Mediation services will be offered to an individual applying for or receiving vocational rehabilitation services whenever a formal appeal process has been initiated. The individual applying for or receiving vocational rehabilitation services may be represented, in the mediation, by a person selected by them. Vocational Rehabilitation is not responsible for costs related to representation of the individual.
- B. The use of mediation services will be completely voluntary for all parties. Agreement to use mediation will not preclude the resolution of a dispute using other formal or informal processes. Mediation will not be used to deny or delay the individuals right to an impartial due process hearing. Mediation will not be used to deny any other right afforded to the individual under Title I of the Act. Mediation sessions will be scheduled in a timely manner and held at a place agreed on by the parties involved. Any cost associated with the process of the mediation services will be covered by the state.
- C. In a case where mediation has been requested, the applicant, the eligible individual, or their representative can submit evidence or information, at the mediation session, which will support their position. Discussions that occur, as part of the mediation process will remain confidential and will not be used in any subsequent due process or civil proceeding. Parties involved in the mediation will sign a confidentiality pledge showing this before the commencement of the mediation process. If they agree, because of the mediation, it will be put in writing and signed by all parties involved. Pending a mediated agreement, Vocational Rehabilitation will not suspend, reduce or terminate services that are being provided under an individualized plan for employment, or evaluation or assessment services unless:
 - 1. The individual so requests; or,

2. Vocational Rehabilitation has evidence that the services were obtained through misrepresentation, fraud, collusion or other criminal conduct.
- D. A qualified and impartial mediator, trained in effective mediation techniques, will provide the mediation. A list will be maintained of individuals who are qualified and knowledgeable about the Act and the regulations relating to the provision of vocational rehabilitation services.

III. Specific Procedures for Impartial Due Process Hearings

1. An individual applying for or receiving vocational rehabilitation services, who is dissatisfied with any determination made by vocational rehabilitation personnel concerning the furnishing or denial of services, may request a timely review of the determination. The formal appeals process is initiated by the individual (or the individuals representative) in writing to the department's appeals supervisor, who forwards the request to the Office of Administrative Hearings with a copy to the state unit.
2. A request for an impartial due process hearing or mediation is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied.
3. A request for a due process hearing or mediation will not preclude the parties involved from informally resolving the dispute. Actions taken to resolve the dispute will not be used to deny or delay the due process hearing.
4. A hearing officer must be selected:
 - a. From a pool of qualified, impartial hearing officers identified jointly by the department and the rehabilitation advisory council; and
 - b. (1) On a random basis; or
(2) By agreement of the parties.
5. The hearing officer must conduct an appeal hearing within sixty days of the filing date of the claimant's request for review, unless informal resolution is achieved or the parties agree to a delay. The claimant or the claimant's representative must be given an opportunity to present additional evidence, information and witnesses to the hearing officer, to be represented by counsel or other appropriate advocate and to examine all witnesses and other relevant sources of information and evidence.

6.
 - a. Except as provided in subdivision b, the division may not suspend, reduce, or terminate services provided under an individual written rehabilitation program pending final determination of the claimant's request for review.
 - b. The division may suspend, reduce, or terminate services provided under an individual written rehabilitation program:
 - (1) If the claimant so requests; or
 - (2) The agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the claimant.
7. The hearing officer shall recommend a decision based on the provisions of the Vocational Rehabilitation Act of 1973, as amended, the approved vocational rehabilitation state plan, federal and state vocational rehabilitation regulations and policies, and article 75-08, and shall provide to the claimant or, where appropriate, the claimant's representative, and to the director of the division, a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing. The recommendation of the hearing officer becomes the decision of the division unless, within twenty days of issuance of the hearing officer's recommended decision, the director of the state unit or the applicant or eligible individual seeks in writing, an impartial review of the recommendation. The impartial review would be conducted by the director of the designated state agency.
8. Prior to deciding to review the hearing officer's recommended decision under subsection 7, the director may secure assistance or advice from staff assistants without the communication of advice or assistance being treated as ex parte communication in violation of North Dakota Century Code section 28-32-12.1, if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
9. If a review of the hearing officer's recommended decision is requested under subsection 7, each party shall have the opportunity to submit additional evidence and information relevant to a final decision. Any party who wishes to submit additional relevant evidence and information must transmit that evidence and information, or an abstract thereof, to the other party and to the director of the state unit agency within five days after the submission of the written request to review the hearing officer's recommended decision. Each party may, within five days after mailing or delivery of the evidence, information, or abstract provided by the other party, request an opportunity to provide the party's own evidence or information in a hearing to be called on at least ten days' notice, all pursuant to North Dakota Century Code section 28-32-07.

10. The director of the state agency may overturn or modify a hearing officer's recommendation that supports the position of the claimant if the director concludes, based on clear and convincing evidence, that the recommendation is clearly erroneous because it is contrary to the Vocational Rehabilitation Act of 1973, as amended [29 U.S.C. 701, et seq.], the approved vocational rehabilitation state plan, federal or state vocational rehabilitation regulations and policies, or article 75-08.
11. The director of the state agency shall make a final decision within 30 days. A written decision will be given to the applicant or eligible individual and the designated state unit. The decision will include a full report of the findings and the grounds for the decision.
12. The hearing officer or the director may grant reasonable extensions of time for good cause shown by either party, except that:
 - a. The hearing officer may extend the time for conducting an appeal hearing beyond forty-five days of the filing date of the claimant's request for review if the parties are engaged in mediation and agree to the extension;
 - b. The twenty-day period, within which the director of the state unit or the applicant or eligible individual may request a review of the hearing officer's recommended decision, may not be extended; and
 - c. The thirty-day period, within which a dissatisfied claimant may request review, may not be extended.
13. The director of the state agency may not delegate responsibility to make any final decision to any officer or employee of the designated state unit.